

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

AUNYSTI BANKS, A MINOR  
BY HER GUARDIAN OF THE ESTATE,  
CITIZENS BANK OF BATESVILLE, ARKANSAS

AND

ARKANSAS DEPARTMENT OF HEALTH  
AND HUMAN SERVICES

PLAINTIFFS/  
COUNTER DEFENDANTS

v.

No. 4-06-CV-0322 GH

HAROLD B. COLLINS, M.D. and  
AMY CATHERINE EBLE, M.D.  
F/K/A AMY WEIDOWER-LAMB, M.D.  
F/K/A AMY WEIDOWER, M.D.

DEFENDANT/THIRD-PARTY  
PLAINTIFFS

v.

EDWANNA BANKS AND  
CHARLES BANKS

THIRD-PARTY DEFENDANTS

**BRIEF IN SUPPORT OF RESPONSE OF ARKANSAS DEPARTMENT  
OF HEALTH AND HUMAN SERVICES TO MOTION TO DISMISS**

Comes the Arkansas Department of Health and Human Services and for its Brief in Support of Response to the Motion to Dismiss brought by Amy Catherine Eble, M.D. states:

**I. INTRODUCTION**

Separate Plaintiff, the Arkansas Department of Health and Human Services (hereinafter the DHHS) alleges this Court has subject matter jurisdiction because the Defendants were not citizens of the State of Arkansas at the time the action was initiated. Amy Catherine Eble, M.D. alleges that this court is without subject matter jurisdiction because she is a citizen of the State

of Arkansas. She alleges that she is temporarily absent from the State of Arkansas while her husband completes a fellowship in Texas. The DHHS asserts that, subsequent to her move to Texas, the manner in which she has conducted her affairs is inconsistent with a temporary absence from the State of Arkansas and that there is diversity of citizenship.

## II. DISCUSSION

By enacting 28 U.S.C. § 1332(a)(1) Congress limited the jurisdiction of federal district courts to “all civil actions where the matter in controversy exceeds...\$75,000...and is between...citizens of different states.” *GMAC Commercial Credit v. Dillard Dept. Stores*, 357 F.3d 827, 828 (8<sup>th</sup> Cir. 2004). The party asserting diversity jurisdiction bears the burden of demonstrating diversity by a preponderance of the evidence. *Blakemore v. Mo. Pac. R.R. Co.* 789 F.2d 616, 618 (8<sup>th</sup> Cir. 1986). The “determination of citizenship for purposes of diversity is a mixed question of law and fact, but mainly fact.” *Altimore v. Mount Mercy Hospital*, 420 F.3d 763, 768 (8<sup>th</sup> Cir. 2005).

Dr. Eble contends that she intends to return to Arkansas at some future date and thus has not demonstrated the requisite intent to change her domicile to the State of Texas. In support of this position Dr. Eble attaches her affidavit. Among other things, Dr. Eble contends that she: (1) purchased a home in Texas with a three year adjustable mortgage; (2) purchased real property in Pulaski County, Arkansas; (3) made a verbal commitment to a future practice with the Central Clinic for Women in Arkansas; (4) contributes to a church in Guy, Arkansas. See Amy C. Eble Aff. ¶¶ 12-14, 18. Dr. Eble also attached the

affidavits of two former colleagues, both of whom assert that Dr. Eble previously expressed intent to return to Arkansas after her husband completes his fellowship. See Holly Cochran Aff. (Eble Exhibit B) and Paul McChristian Aff. (Eble Exhibit C).

At first blush Dr. Eble's actions seem consistent with the actions of a citizen of Arkansas. However, Dr. Eble failed to mention that she has affirmatively undertaken certain actions which contradict her verbal assertions. On July 8, 2003 Dr. Eble surrendered her Arkansas Driver's License after obtaining a Driver's License in the State of Texas. See David R. Hudelson Aff ¶ 5 and Exhibit B. Shortly thereafter, Dr. Eble registered to vote in Brazoria County, Texas listing her residence in Manvel, Texas as her domicile for purposes of voter registration. *Id.* ¶6. Texas Statutes § 11.001 ELEC. and § 11.002 ELEC. mandate that an individual must be a resident of the State of Texas as a condition precedent to establishing eligibility to vote as a qualified voter. Other records maintained by Pulaski County, Arkansas reflect that she has not assessed personal property subsequent to her move to Texas. *Id.* ¶7. It follows that her failure to assess personal property and pay the resulting taxes statutorily prevents Dr. Eble from registering a motor vehicle in the State of Arkansas. Dr. Eble did not update her Arkansas voter registration. Records maintained by the Circuit Clerk of Pulaski County, Arkansas reveal that she has not voted in Arkansas since November 5, 2002 and that her status is inactive. *Id.* ¶8 and Exhibit C.

Ark. Code Ann. § 26-51-102 defines a resident as it relates to the Arkansas “Income Tax Act of 1929.” Ark. Code Ann. § 26-51-201(a) imposes a tax upon the entire income of every resident. It is notable that Dr. Eble does not contend that she has claimed Arkansas residency for the purposes of the tax code. In this regard the regulations adopted by the Arkansas Department of Finance and Administration (the agency responsible for administering the State tax code) prove illuminating. Those regulations, found at State Income Tax Regulations, section 1.26-51-102(9), contain a list of factors the State of Arkansas considers when determining whether an individual is a resident of this State:

- a) Address used on federal income tax returns;
- b) Address used on telephone, utility and commercial documents;
- c) Address used on voter registration;
- d) Address used on drivers license, hunting and fishing license;
- e) Address used on motor vehicle, boat and trailer registration;
- f) Address used on real and personal property tax documents;
- g) Address used on county and other tax assessments;
- h) Address on governmental documents, such as military records.  
With respect to military records, the Leave and Earning Statement is a very important document;

Comparing these factors to the conduct of Dr. Eble it is clear that the State of Arkansas does not consider her a resident, and much like the 8<sup>th</sup> Circuit Court of Appeals noted in *Altimore*, the State of Arkansas would be surprised that Dr. Eble claims Arkansas as her domicile.

### **III. CONCLUSION**

The foregoing establishes, by a preponderance of the evidence that Amy Catherine Eble is a citizen of and domiciled in the State of Texas and thus not a citizen of the State of Arkansas. Diversity jurisdiction is appropriate.

Respectfully submitted,

ARKANSAS DEPARTMENT OF HEALTH AND  
HUMAN SERVICES  
Office of Chief Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. I further certify I have served copies to the individuals listed below by depositing same in the U.S. Mail in properly addressed envelopes with adequate postage thereon this 26<sup>th</sup> day of April, 2006:

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